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In the

SUPREME COURT OF THE

UNITED STATES

No. _____

AMALGAMATED TRANSIT UNION,
LOCAL DIVISION 1309, et alia,

Petitioner,

v.

SAN DIEGO TRANSIT CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, Amalgamated Transit Union, Local Division 1309, et al., pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on April 29, 1969, in Case No. 24011, styled San Diego Transit Corporation, Appellee, v. Amalgamated Transit Union, Local Division 1309, et al.,

Appellants; wherein the United States Court of Appeals for the Ninth Circuit vacated a preliminary injunction and/or a temporary restraining order to avoid determining Appellee's liability on the injunction bond. After vacating the order, the Court refused to determine the propriety of said temporary restraining order, holding inter alia, that Appellant's entitlement to damages of this character is so questionable, and the amount thereof would, in any event, be so small, that this litigating ought not to be continued for the sole purpose of assessing damages.

OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is unreported. The order of the United States District Court for the Southern District of California is unreported, and both appear in Appendix "A" hereto.

JURISDICTION

The Constitution of the United States and 28 U.S.C.A. Section 1254 confer upon this Court jurisdiction to grant a Petition for Certiorari in this matter.

QUESTIONS PRESENTED

1. Does settlement of a labor dispute necessarily moot the appeal from an injunction issued in violation of the Norris-LaGuardia Act?

2. Are a Defendant's damages for a wrongfully issued restraining order in a labor dispute so questionable

that the federal question of the propriety of said restraining order is rendered nugatory?

3. Will national labor policy and due process of law be subverted if the Defendant's right to damages for an allegedly wrongfully issued restraining order is abrogated by the Court's refusal to decide the propriety of said order on appeal?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent Constitutional provision involved consists of the Fourteenth Amendment to the Constitution of the United States. In addition, the Norris-LaGuardia Act (29 U.S.C.A. Section 101), et sequitur, and the Labor-Management Relations Act (29 U.S.C.A. Section 14), et sequitur, are involved. Pertinent provisions are set forth in Appendix "B" hereton.

STATEMENT OF THE CASE

A. Pertinent Pleadings and How the Federal Questions were Raised.

The members of Amalgamated Transit Union, Local Division 1309, a labor organization, hereinafter "Union", in an attempt to secure the implementation of a ready-fare program for public transit in San Diego, voted to cease carrying any money or change in the course of their employment and notified the Plaintiff-Appellee, San Diego Transit

Corporation, hereinafter "Employer", of this action. Subsequently, the Employer filed a complaint in the Superior Court of the State of California, seeking a temporary restraining order (but not seeking to arbitrate the dispute), alleging a violation of the collective bargaining agreement between the parties and urging that the public interest would be compromised unless the Union was compelled to cease and desist from its threatened action. The Union removed the case to the United States District Court, Southern District of California, as an action arising under Section 301(a) of the Labor-Management Relations Act (29 U.S.C.A. Section 185(a)).

The Union then resisted the issuance of any restraining order as a violation of the Norris-LaGuardia Act (29 U.S.C.A. Section 101), et sequitur, and on the grounds that such an injunction would be contrary to prior decisions of this Court.

The District Court ordered the parties to arbitrate the issue of a ready-fare system and simultaneously issued a temporary restraining order.

The Union appealed the District Court's order based in part on the Norris-LaGuardia Act. While the appeal was pending, the Union and the Employer negotiated a ready-fare program and thereby settled their labor dispute. Plaintif Appellee moved to dismiss Defendants' appeal from the injunctiv order of the District Court on the grounds that the issue was

moot. The Defendants opposed the motion to dismiss on the grounds that a determination of the validity of the restraining order is necessary as a predicate to the Defendants claim for damages secured by a five hundred dollar ($500.00)* bond which Plaintiff-Appellee was ordered to file in connection with issuance of the temporary restraining order. The Court of Appeals for the Ninth Circuit directed the District Court to vacate the temporary restraining order and to exonerate the bond.

B. The Facts.

Employer operates a transit system in and about the City of San Diego (See Paragraph I of Plaintiff's Complaint).

The Union is the recognized collective bargaining representative of the employees of the Employer employed in the classification of driver (See Exhibit 2 of Defendants' Petition for Removal, page 7).

Since June of 1968, the Union had sought to negotiate with the Employer about a ready-fare program for San Diego (See Affidavit of David Moore, dated February 14, 1969, page 1). No fruitful negotiations had resulted by February of 1969.

On February 13, 1969, the membership of the

*The amount of the bond was set by the Court without hearing on that issue.

Union employed by the Employer voted to cease carrying any money or change in the course of their employment, if a ready-fare program had not been negotiated with the Employer by March 17, 1969. On February 14, 1969, the Employer was informed of this action.

There followed meetings on February 14, 1969, and February 21, 1969, between the Union and the Employer, but no bargaining took place as a result of the Employer's absolute refusal to bargain unless the membership rescinded its action of February 13, 1969.

There followed a series of letters, attached as exhibits to the Affidavit of David Moore, dated February 14, 1969. In these letters, the Employer persisted in its refusal to bargain. In fact, the Employer failed and refused to attend a meeting called by the Federal Mediation and Conciliation Service at a time and place previously concurred in by the Employer (See Affidavit of David Moore, dated February 14, 1969 page 3, and the Affidavit of Victor D. Baldwin, dated February 14, 1969, page 3).

On March 13, 1969, the Employer filed a complaint for injunction in the Superior Court of the State of California for the County of San Diego (See the original complaint).

The Union removed the action to the United States District Court for the Southern District of California on March 14, 1969, on the question of a preliminary injunction.



The Union filed Points and Authorities and the Affidavits of David Moore and Victor D. Baldwin prior to the hearing on March 14, 1969.

The Union emphasized the danger of great bodily harm to its members which, it pointed out, was common knowledge confirmed by the reading of any major daily newspaper Across the country, members of the Union were being robbed, beaten and even stabbed for the forty or fifty dollars which they were required to carry to make change.

In the course of the hearing, the District Court ordered the parties to arbitrate the dispute, although the specific question or questions to be arbitrated were not defined by the Court, and the Employer had not sought arbitration. Pending this ill-defined "arbitration", the Union and its members were enjoined from engaging in concerted activity in furtherance or support of their bargaining position

The order of the District Court required the members of the Union to continue to subject themselves to great danger of bodily harm for an indefinite period pending arbitration of undefined questions where the arbitration process had not been invoked by either party, presumably because the ready-fare program was not regarded as an arbitrable subject under the collective bargaining agreement. The Union opposed the Court's order on the ground that the order restrained activity protected by Section 7 of the Labor-Management

Relations Act, and that the Norris-LaGuardia Act prohibited the issuance of such an injunction.

The Union appealed the order of the District Court to the Court of Appeals for the Ninth Circuit. Prior to the hearing on the appeal, the parties negotiated a settlement of the underlying dispute with the provision that the settlemen would not affect the pending appeal (See Affidavit of David Moore, contained in Points and Authorities in the Ninth Circuit in opposition to motion to dismiss appeal). Nevertheless, the Employer moved to dismiss the Union's appeal on the grounds of mootness.

C. The Trial Court's Temporary Restraining Order Against the Union.

The Federal District Court rejected the Union's arguments that the negotiation of a ready-fare program was not arbitrable under the collective bargaining agreement, but was an appropriate subject for collective bargaining. The District Court also rejected the Union's claim of federal preemption.

Instead, the Court declared, "there is an arbitrable issue. Under the contract, if one or the other of the parties desired to arbitrate and requested arbitration, according to the terms of the contract -- and I think in the public interest it should be arbitrated -- and I don't think that there should be precipitant action taken." (R. 11). The Court then issued a temporary resraining order "until the

arbitration matter is concluded. . ." (R. 17).

D. The Court of Appeals for the Ninth Circuit Directed that the Order be Vacated and the Bond Exonerated.

Upon settlement of the issue of the ready-fare system, the Employer moved to dismiss the Union's appeal from the District Court injunctive order. The Court rejected the Union's argument that determination of the propriety of the issuance of the order was a necessary predicate to the Union's claim for damages secured by the bond which the Employer had been ordered to file. Rather, the Court concluded "that Defendants' entitlement to damages of this character is so questionable and the amojnt thereof so small that this litigation ought not to be continued for the sole purpose of assessing damages."

REASONS FOR GRANTING THE WRIT

1. THE COURT OF APPEALS FOR THE NINTH CIRCUIT DECIDED A QUESTION OF FEDERAL LAW IN CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT BY DISMISSING THE UNION'S APPEAL.

(a) Prior Decisions on Injunctions.

When the Union settled the dispute which was the genesis of this litigation, it specifically preserved its position before the Court of Appeals.

Traditionally, a case has been considered

moot only when there is no controversy between the parties which would enable the Court to grant relief.

Liner v. Jafco, 375 U.S. 301 (1964).

In the instant action, the Union was pursuing its appeal to recover its damages resulting from the issuance of a restraining order by the District Court in contravention of the Norris-LaGuardia Act. These damages, including attorneys' fees incurred in resisting the order pursuant to 29 U.S.C.A. Section 107, were substantial.

Therefore, the Union has real and substantial interest in obtaining a decision on the merits of its appeal. If it were successful on its appeal, the Union could recover substantial damages.

In Liner v. Jafco, 375 U.S. 301 (1964), this Court established the right of a party wrongfully restrained to have a final determination on the question of the propriety of the injunctive order, so that the party enjoined might recover the damages which it had incurred.

The decision of the Circuit Court herein is clearly in conflict with Liner v. Jafco.

(b) Alternate Sources of Federal Law.

In Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957), the Court held that state law could be a proper source for federal substantive law in suits to enforce collective bargaining agreements.

The instant suit is just such a suit.

The law of California on the issue of the enjoined party's right to a determination of the propriety of the injunction is clearly enunciated in Piper v. Hawley, 179 Cal. 10 (1918).

In Piper, the Supreme Court of California, in ruling on a motion to dismiss an appeal as moot because the acts required of the appealing party had been performed, stated:

> "As to the first of these grounds, the motion is clearly not good, for to hold otherwise would be to deprive a party rightfully resisting an improper preliminary mandatory injunction of his remedy for costs and damages by the simple process of executing the unlawful order."

Thus, federal substantive law, whether drawn from Liner or from state law, is contrary to the order of the Circuit Court in this matter.

(c) Prevailing Decisions Relating to National Labor Policy.

The decision of the Court of Appeals in this matter would require employers and unions to continue their disputes to preserve their positions before that Court on appeal.

The preamble to the Labor-Management Relations Act, 29 U.S.C.A. Section 141, et sequitur, pronounces a federal labor policy favoring the amicable settlement of labor disputes which place a burden on interstate commerce.

This policy of amicable settlement of labor disputes was further fortified in the June Trilogy of Steelworkers Cases, 363 U.S. 564 (1960).

The policy of amicable adjustment between the parties holds such an important place in federal labor policy that Section 8 of the Norris-LaGuardia Act, 29 U.S.C.A. Section 108, denies all forms of injunctive relief to any party to a labor dispute who has not availed himself of a possible avenue of peaceful settlement of that dispute.

There are numerous other pronouncements of the federal policy of prompt peaceful settlement of labor disputes. The Circuit Court's ruling which would require a party not to settle a labor dispute in order to preserve its legal position is clearly contrary to national labor policy as declared and reaffirmed by this Court in numerous cases.

(d) Conclusion.

The ruling of the Circuit Court was contrary to express decisions of this Court as well as to federal substantive law derived from state law. Finally, the decision of the Circuit Court contravenes the national labor policy as

expressed in the Norris-LaGuardia Act favoring peaceful resolution of labor disputes without coercion by injunctive judicial process.

2. THE COURT OF APPEALS FOR THE NINTH CIRCUIT, BY ITS ORDER, SO FAR SANCTIONED SUCH A DEPARTURE BY A LOWER COURT AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

(a) On the Merits of the Injunction.

As Counsel for the Employer contends in his motion to dismiss, the only relief sought by the Employer was injunctive (exclusive of arbitration). Thus, the Trial Court in this matter clearly departed from existing federal substantive law and the specific provisions of the Norris-LaGuardia Act.

The Points and Authorities submitted by the Union to the Federal District Court urged that under Section 4 of the Norris-LaGuardia Act, supra, no Federal Court has authority to issue an injunction preventing anyone from ceasing or refusing to perform any work in a case arising from a labor dispute.

Yet, the order of the Court clearly enjoins and restrains members of the Union from refusing to carry money and to make change in the course of their employment. It should be noted that the collective bargaining agreement

between the Union and the Employer does not contain a "no strike" clause, and the Employer had neither sought to invoke the grievance and arbitration procedures of the contract, nor to claim that the arbitration clause was applicable.

Section 7 of the Norris-LaGuardia Act authorizes the issuance of injunctions in severely limited fact situations and only after specific findings. No such limitations or findings may be found in the instant case.

Section 8 of the Norris-LaGuardia Act further prohibits injunctive relief to any party who has not exhausted all possible avenues of peaceful settlement. Yet, the Employer had refused meaningful negotiations for nine months and thumbed its nose at a meeting called by the Federal Mediation and Conciliation Service to attempt to resolve the dispute.

Nowhere in any of the pleadings in this matter is there any indication that the Employer even attempted to comply with any of the specific requirements of Norris-LaGuardia which are conditions of precedent to federal injunctive relief.

These unquestionable violations of the Norris-LaGuardia Act will remain unremedied unless the order of the Circuit Court of Appeals is reviewed by this Court.

(b) <u>The Question of Damages</u>.

The Circuit Court raised the question of

the Union's right to recover its attorneys' fees. Section 7 of the Norris-LaGuardia Act, supra, includes attorneys' fees as damages by its terms. While Federal Courts may sometimes grant attorneys' fees to wrongfully enjoined parties with reluctance, they have uniformly done so in cases involving labor disputes.

E.J. & E. Ry Co. v. Railroad Trainmen, 302 F. 2d 540, certiorari denied, 371 U.S. 823.

In Houston & North Texas Motor Freight Line v. Teamsters Local 745, 27 F. Supp 262 (D.C. Tex. 1939) the Court held that those wrongfully enjoined could recover damages even though no bond had been given.

Thus, contrary to the Court of Appeals decision, the Union was clearly entitled to recover damages sustained in opposing an injunction issued in violation of the Norris-LaGuardia Act.

(c) Conclusion.

The Trial Court clearly departed from existing federal substantive law by granting an injunction in violation of the Norris-LaGuardia Act; and the Court of Appeals sanctioned that departure in such a manner as to warrant an exercise of this Court's power of supervision.

CONCLUSION

For the reasons assigned, Petitioners pray that this Petition for Writ of Certiorari should be granted and

that the Writ issue to review the decision and an order of Court of Appeals for the Ninth Circuit, entered in Case No. 24011 on April 25, 1969.

Dated: July 21, 1969, at San Diego, California.

Respectfully submitted,

BRUNDAGE, WILLIAMS & ZELLMANN

By _____
Jerry J. Williams
of Counsel

Richard D. Prochazka
Attorneys for Petitioners
1750 Sixth Avenue
San Diego, California 92101

Labor Management Relations Act of 1947, as Amended

The National Labor Relations Act (popularly known as the Wagner Act), 49 Stat. 449, 29 U.S.C. §151, was approved on July 5, 1935. Twelve years later this statute was amended and supplemented by the Labor Management Relations Act, 1947 (popularly known as the Taft-Hartley Act), 61 Stat. 136, 29 U.S.C. §141, passed on June 23, 1947, over a Presidential veto.

On September 14, 1959, there was signed into law the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519. Title II, §§201(d) and (e), Title V, §505, and Title VII of the LMRDA amend the Taft-Hartley Act. The balance of Titles II and V and all of Titles I, III, IV, and VI of the LMRDA constitute original legislation.

Those parts of the Labor Management Relations Act, 1947, that were eliminated by the LMRDA are enclosed in brackets. Provisions that were added and new language that was inserted in pre-existing provisions are in italics. Those parts of the LMRA that were not changed are in roman. A few minor changes made in 1951 and 1958 are not specially marked.

Section 707 of the LMRDA provides that the amendments to the Taft-Hartley Act made by Title VII "shall take effect sixty days after the date of enactment," which means that the effective date was November 13, 1959. Section 707 provides further: ". . . no provision of this title shall be deemed to make an unfair labor practice, any act which is performed prior to such effective date which did not constitute an unfair labor practice prior thereto."

[§ 143. Saving provisions

Nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this chapter. June 23, 1947, c. 120, Title V, § 502, 61 Stat. 162.

§ 157. Right of employees as to organization, collective bargaining, etc.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a) (3) of this title. July 5, 1935, c. 372, § 7, 49 Stat. 452; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 140.

§ 158. Unfair labor practices

(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification---

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2)–(4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 159(a) of this title, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 158–160 of this title, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

§ 176. National emergencies; appointment of board of inquiry by President; report; contents; filing with Service

Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry

or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public. June 23, 1947, c. 120, Title II, § 206, 61 Stat. 155.

§ 178. Strikes subject to injunction; inapplicability of sections 101–115 of this title; review

(a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lockout, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of sections 101–115 of this title shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate United States court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 346 and 347 of Title 28. June 23, 1947, c. 120, Title II, § 208, 61 Stat. 155; June 25, 1948, c. 646, § 32(a), 62 Stat. 991; May 24, 1949, c. 139, § 127, 63 Stat. 107.

§ 185. Suits by and against labor organizations—Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agents; entity for purposes of suit; enforcement of money judgments

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as

an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of process

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

Determination of question of agency

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. June 23, 1947, c. 120, Title III, § 301, 61 Stat. 156.

IN THE

SUPREME COURT OF THE

UNITED STATES

AMALGAMATED TRANSIT UNION, LOCAL DIVISION 1309, et alia, Petitioner, vs. SAN DIEGO TRANSIT CORPORATION, Respondent.	NO. _____ AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA,)
)-SS
COUNTY OF SAN DIEGO.)

Penelope Windisch, being first duly sworn, deposes and says that:

She is over the age of 18, not a party to the present litigation, employed as a Secretary at 1750 Sixth Avenue, San Diego, California; that on March 31, 1969, she served the attached Petition for Writ of Certiorari on the following persons by placing copies thereof in envelopes, properly addressed to them as follows:

Lawrence Patton, Esq.
Scales, Patton, Ellsworth & Corbett
2150 First National Bank Building
San Diego, California 92101

///

///

The Honorable Fred Kunzel
United States District Court
U.S. Courthouse Building
325 West "F" Street
San Diego, California 92101

The envelopes were then deposited by her in the United States Post Office at San Diego, California, postage prepaid. These addresses are the last addresses known to her. There is regular United States mail service to the above addressees.

I swear that the foregoing is true and correct.

Penelope Windisch

Subscribed and sworn to
before me this 21st day
of July, 1969, at San Diego,
California.

OFFICIAL SEAL
NOLA MARCHUS
NOTARY PUBLIC CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Expires July 17, 1971

Nola Marchus

SCALES, PATTON, ELLSWORTH & CORBETT
Attorneys at Law
2150 First National Bank Building
San Diego, California 92101

Telephone: 234-9181

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO TRANSIT CORPORATION, Plaintiff, vs. AMALGAMATED TRANSIT UNION, LOCAL DIVISION 1309, affiliated with A.F.L.-C.I.O., et al., Defendants.	NO. 69-76-K TEMPORARY RESTRAINING ORDER

The hearing on plaintiff's Order to Show Cause Re Temporary Restraining Order came on regularly for hearing on March 14, 1969, at 11:00 o'clock a.m., before the Honorable FRED JUNZEL. Plaintiff appeared by its attorneys, SCALES, PATTON, ELLSWORTH & CORBETT by LAWRENCE A. PATTON and JOHN M. SEITMAN; defendants appeared by BRUNDAGE, HACKLER, WILLIAMS & ZELLMANN by JERRY J. WILLIAMS and RICHARD D. PROCHAZKA. Upon proof being made to the satisfaction of the Court, the Court hereby finds:

EXHIBIT "A"



1. That due notice of this hearing has been given;

2. All the allegations of the complaint are true;

3. Unless restrained, defendants, and each of them, will commit the acts referred to in said complaint and immediate and irreparable loss and damage will occur to plaintiff and accordingly, a temporary restraining order should be granted restraining defendants, and each of them, from committing any and all acts and doing any and all things against which plaintiff complains in the complaint on file herein.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. Defendants, and each of them, their agents, employees, representatives and members, and all persons acting in concert and participation with any of them be, and they hereby are, enjoined from doing, individually or collectively, the following:

(a) Instructing, continuing, sanctioning or assisting any member of defendant, Amalgamated Transit Union, Local Division 1309 (hereinafter referred to as "Local 1309"), to refuse to carry change or be in possession of plaintiff corporation's cash, passes, tickets or tokens, or to refuse to continue to perform all of the ordinary and customary duties performed by members of said defendant Local 1309, including collection of fares and making change to do so and issuing and collecting transfers and zone checks.

(b) Causing or encouraging, or attempting to cause or encourage any member of defendant Local 1309 to turn in his revolving fund, or to refuse to carry change or be in possession of plaintiff corporation's cash, passes, tickets or tokens in any form or to refuse to perform all of the ordinary and customary duties performed by members of said defendant Local 1309, including collection of fares and making change to do so and issuing and collecting transfers and zone checks.

(c) Causing, encouraging or taking any disciplinary or punitive action against any employee of plaintiff or any member of defendant Local 1309 because said employee or member refuses to surrender his revolving fund passes, tickets or tokens and continues to perform all of the ordinary and customary duties performed by members of said defendant Local 1309, including collection of fares and making change to do so and issuing and collecting transfers and zone checks;

2. Bond in the sum of $500.00 shall be furnished;

3. This order shall remain in effect for ten (10) days or until further order of this Court; and

4. Counsel for the respective parties are ordered to confer as promptly as possible to complete an agreement to

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arbitrate the propriety of a ready fare plan for the operation of San Diego Transit Corporation.

DATED: March 14, 1969.

FRED KUNZEL
Judge of the United States
District Court

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SAN DIEGO TRANSIT CORPORATION, Plaintiff-Appellee,	)	
v.	)	No. 24011
AMALGAMATED TRANSIT UNION, LOCAL DIVISION 1309, et al., Defendants-Appellants.	)	

O R D E R

Before: HAMLEY, MERRILL and KOELSCH, Circuit Judges

It appearing that pending this appeal from a district court order, filed March 14, 1969, temporarily restraining defendants from interfering with plaintiff's usual practices with respect to collection of fares and making change on plaintiff's passenger buses, and pending disposition of defendant's motion, filed in this court on March 19, 1969, to stay the temporary restraining order pending disposition of the appeal, the parties have settled their underlying dispute so that plaintiff no longer desires a temporary restraining order; and it further appearing that, by reason thereof, plaintiff has moved to

EXHIBIT "B"



dismiss the appeal as moot, but defendants oppose such motion on the ground that a determination of the validity of the restraining order is necessary as a predicate to their claim for damages secured by a five hundred dollar bond which plaintiff was ordered to file in connection with the issuance of the temporary restraining order; and it further appearing that the damages which defendants seek consist of court costs, attorneys' fees, and wages of Union officials, lost by reason of their absence from normal employment while resisting plaintiff's effort to obtain a temporary restraining order; and it being the view of this court that defendants' entitlement to damages of this character is so questionable, and the amount thereof would, in any event, be so small, that this litigation ought not to be continued for the sole purpose of assessing damages; now therefore, IT IS

ORDERED, that this cause be, and the same is, remanded to the district court with directions to vacate the temporary restraining order, exonerate the bond if a bond was filed, and dismiss the action without prejudice.

/s/
Frederick Hamley

/s/
Charles Merrill

/s/
M. Oliver Koelsch
United States Circuit Judges

Norris-LaGuardia Act

47 Stat. 70, 29 U.S.C. §101 (approved March 23, 1932).

§ 101. Issuance of restraining orders and injunctions; limitation; public policy

No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter. Mar. 23, 1932, c. 90, § 1, 47 Stat. 70.

§ 102. Public policy in labor matters declared

In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted. Mar. 23, 1932, c. 90, § 2, 47 Stat. 70.

§ 103. Nonenforceability of undertakings in conflict with public policy; "yellow dog" contracts

Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 102 of this title, is declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization. Mar. 23, 1932, c. 90, § 3, 47 Stat. 70.

§ 104. Enumeration of specific acts not subject to restraining orders or injunctions

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title. Mar. 23, 1932, c. 90, § 4, 47 Stat. 70.

§ 105. Doing in concert of certain acts as constituting unlawful combination or conspiracy subjecting person to injunctive remedies

No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 104 of this title. Mar. 23, 1932, c. 90, § 5, 47 Stat. 71.

§ 106. Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members, and agents

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof. Mar. 23, 1932, c. 90, § 6, 47 Stat. 71.

§ 107. Issuance of injunctions in labor disputes; hearing; findings of court; notice to affected persons; temporary restraining order; undertakings

No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however*, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recom-

pense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking mentioned in this section shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing in this section contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity. Mar. 23, 1932, c. 90, § 7, 47 Stat. 71.

§ 108. Noncompliance with obligations involved in labor disputes or failure to settle by negotiation or arbitration as preventing injunctive relief

No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration. Mar. 23, 1932, c. 90, § 8, 47 Stat. 72.

§ 109. Granting of restraining order or injunction as dependent on previous findings of fact; limitation on prohibitions included in restraining orders and injunctions

No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided in this chapter. Mar. 23, 1932, c. 90, § 9, 47 Stat. 72.

§ 110. Review by Court of Appeals of issuance or denial of temporary injunctions; record; precedence

Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the court of appeals for its review. Upon the filing of such record in the court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character. Mar. 23, 1932, c. 90, § 10, 47 Stat. 72; June 25, 1948, c. 646, § 32(a), 62 Stat. 991; May 24, 1949, c. 139, § 127, 63 Stat. 107.

§ 113. Definitions of terms and words used in chapter

When used in this chapter, and for the purposes of this chapter—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrang terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia. Mar. 23, 1932, c. 90, § 13, 47 Stat. 73.

SUPREME COURT, U. S.

FILED
NOV 17 1969
JOHN F. DAVIS, CLERK

No. 376

In The Supreme Court of The United States

October Term, 1969

AMALGAMATED TRANSIT UNION,
LOCAL DIVISION 1309 et al.,

Petitioner,

vs.

SAN DIEGO TRANSIT CORPORATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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CONSTITUTION

United States Constitution, Article III, §2 1

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969

No. 376

AMALGAMATED TRANSIT UNION,
LOCAL DIVISION 1309 et al.,

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Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Respondent respectfully submits that a proper determination of the issues which form the basis of the petition requires, in addition to the constitutional and statutory provisions set forth by petitioner, consideration of United States Constitution Article III, §2, which

provides, in part:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, [and] the Laws of the United States . . . . "

QUESTION PRESENTED

1. Where a party to a labor dispute files a complaint for injunctive relief and obtains thereby a preliminary injunction, is an appeal by the enjoined party from the preliminary injunction rendered moot if, pending the appeal, all parties to the action enter into an agreement which puts to rest all disputed matters which gave rise to the action?

STATEMENT OF THE CASE

On or about February 14, 1969, respondent San Diego Transit Corporation, which operates facilities for public transportation by bus in and about San Diego, California, received a letter from petitioner Amalgamated Transit Union, Local Division 1309, informing respondent that as of March 16, 1969, the bus drivers represented by that Union would no longer carry any cash, passes, tickets or tokens while operating respondent's busses. (Exhibit "A" to Complaint.) Respondent and petitioner Amalgamated Transit Union, Local Division 1309, are parties to a collective bargaining agreement effective August 1, 1967, through March 31, 1970, under the terms of which petitioner represents all bus

drivers employed by respondent. (Exhibit "2" to Petition For Removal.) Negotiations concerning initiation of a "Ready-Fare Plan" to relieve petitioner's drivers of this duty had been conducted between the parties over a period of several months prior to February 14, 1969. In spite of intensive negotiations, it became clear that respondent could not implement a "Ready-Fare Plan" by March 16, 1969. Respondent sought injunctive relief in the state court in order to avert mass confusion and inconvenience to the citizens of San Diego, California. (Complaint for Injunction filed March 12, 1969.) Upon reading the verified complaint, the state court directed petitioner to appear before the court on March 14, 1969, to show cause why a preliminary injunction should not be issued against such threatened unilateral action. On March 13, 1969, petitioner sought and obtained removal of the action to the United States District Court for the Southern District of California. (Petition For Removal.)

On March 14, 1969, the parties appeared before United States District Judge Fred Kunzel for hearing on respondent's order to show cause. After extensive argument the court, in the protection of the public interest, granted the preliminary injunction against petitioner's threatened unilateral action and respondent was ordered to file, and did file, a bond. (Appendix "A" to Petition for Writ of Certiorari pp. 18-21.) On that same date a Notice of Appeal was filed by petitioner.

On March 19, 1969, petitioner filed with the United States Court of Appeals for the Ninth Circuit a Motion for Stay Pending Appeal and that court directed the parties to appear before it on March 25, 1969, for oral argument on that motion. After hearing on that date,

the court took the motion under submission and directed the parties to keep the court advised of the progress of further negotiations between the parties.

Between March 25, 1969, and April 10, 1969, while petitioner's Motion for Stay Pending Appeal was under submission, extensive negotiations took place between petitioner and respondent with regard to adoption of a "Ready-Fare Plan" by respondent. These negotiations led to an agreement between the parties which instituted a "Ready-Fare Plan" for busses in and about San Diego, thus relieving petitioner's members from any duty to carry cash, passes, tickets or tokens on the busses. This agreement was ratified by the Board of Directors of respondent on April 8, 1969, and by the members of petitioner on April 10, 1969.

Pursuant to the court's request, respondent on April 14, 1969, filed in the Ninth Circuit Court of Appeals a Motion to Dismiss the appeal on the ground that the adoption of a "Ready-Fare Plan" rendered the appeal moot. Inasmuch as the complaint sought only an injunction, no effective relief could then be granted by the court. (Complaint for Injunction pp. 6-7.) Respondent's Motion to Dismiss was granted by the court on April 25, 1969. (Appendix "A" to Petition for Writ of Certiorari pp. 22-23.)

REASONS WHY WRIT SHOULD BE DENIED

I. THE DISMISSAL BY THE UNITED STATES COURT OF APPEALS CREATES NO CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

The Petition before this Court places great reliance upon an asserted conflict between the order of April 25, 1969, dismissing the appeal and Liner v. Jafco, Inc., 375 U.S. 301 (1964). Respondent respectfully submits that the conflict is more apparent than real.

In Liner, a state court had issued the injunction in a labor dispute and the state appellate court had held the appeal to be moot since construction on the job site had been completed. The writ of certiorari by the Supreme Court of the United States was then directed to the state appellate court after the state supreme court denied certiorari. Respondent submits that the import of the Liner case lies in the Court's refusal to allow state courts, by determining an appeal to be moot, to interfere with national labor policy. The opinion in Liner at page 306 so states. Further, respondent urges that it was for this reason that this Court found it necessary to decide that whether a matter is moot is, in itself, a federal question. The Court in Liner then concluded that under the facts present the case was not moot.

It is apparent at the outset that the case at bar is distinguished from Liner v. Jafco, Inc., supra, by the fact that the injunction in this action was issued by a federal court after removal from the state court and after full hearing. This order was left undisturbed by a federal appellate court. The case at bar involves no

possible interference with national labor policy, as did Liner v. Jafco, Inc., supra, and petitioner has already received a federal determination on its case. The petitioner Union places its position not upon an interference with national labor policy as in Liner, but rather upon its disagreement with the factual determination made by the United States Court of Appeals for the Ninth Circuit when it compared Liner v. Jafco, Inc. with the case at bar.

San Diego Transit Corporation urges that the conclusion of the court of appeals was required and appropriate when the facts of the case were tested in the light of the standard laid down in Liner v. Jafco, Inc., supra, Barker Co. v. Painters Union, 281 U.S. 462 (1930) and Dakota County v. Glidden, 113 U.S. 222 (1885). The only prayer before the court in this case was one for injunctive relief to prevent interference with an aspect of respondent's business which had been extinguished by agreement between the parties.

II. THE DAMAGES RECOVERABLE BY PETITIONER, IF ANY, FOR WRONGFUL ISSUANCE OF AN INJUNCTION ARE, IN ANY EVENT, UNSUBSTANTIAL.

Respondent obeyed the order of the United States District Court for the Southern District of California by filing a bond in the penal sum of $500.00. This bond is still in full force and effect as filed, no motion ever having been made by petitioner to increase the amount of the undertaking. Petitioner has urged both the United States Court of Appeals for the Ninth Circuit and this

Court to allow the present litigation to continue so that petitioner might recover its damages in the event it could obtain a determination that the injunction was wrongfully issued.

When it is recognized that if petitioner has any recovery it is limited to the amount of respondent's bond in the sum of $500.00, the opinion of the Ninth Circuit Court of Appeals that the claim, if any, is "de minimis" takes on its true perspective. This proposition is amply supported by the rule established in the federal courts that recovery is upon the bond, not independent of it, and thus is limited by the terms of the bond. Meyers v. Block, 120 U.S. 206 (1887), International L. Garment Workers Union v. Donnelly Garment Co. et al., 147 F.2d 246 (8th Cir. 1945), cert. den. 325 U.S. 852.

Petitioner relies upon the case of Houston & North Texas Motor Freight Lines vs. Local No. 745, Etc., 27 F.Supp. 262 (D.C. Tex. 1939) for the proposition that a party wrongfully enjoined could recover damages even if no bond were given. (Petition for Writ of Certiorari p. 15.) A careful reading of that case does not disclose such a holding. The court there merely stated by way of dictum that such may be the rule, but then went on to deny recovery.

Respondent submits that the limit of recovery is clear where a bond has been filed and where there is no allegation of malicious procurement of the injunction. Benz v. Compania Naviera Hidalgo, S.A., 205 F.2d 944 (9th Cir. 1953), cert. den. 346 U.S. 885, Jamaica Lodge 2188, Etc. v. Railway Express Agency, Inc., 200

F. Supp. 253 (D.C.N.Y. 1961). Respondent would urge, therefore, that the Ninth Circuit Court of Appeals correctly ruled that the matter was "de minimis" and that the damages, if any, suffered by petitioner are not such that a substantial stake prevails in the judgment.

III. NATIONAL LABOR POLICY IS ADVANCED RATHER THAN THWARTED BY THE DISMISSAL.

As petitioner correctly points out, national labor policy favors amicable settlement of labor disputes. United Steelworkers of America v. American Mfg. Co., 363 U.S. 564 (1960), United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960), United Steelworkers of America v. Enterprise Wheel & Car Corporation, 363 U.S. 593 (1960). The current litigation began on March 12, 1969, as a dispute over initiation and implementation of a "Ready-Fare Plan". By reason of agreement between the parties, that "Ready-Fare Plan" has been fully operational in San Diego since April 27, 1969. Regardless of the basic assertions that the petitioner Union failed to file a grievance or that respondent San Diego Transit Corporation failed to bargain collectively, it would seem that the real dispute has long since passed and that national labor policy and industrial peace would best be served by declining to continue the dispute at this late date. Contrary to the position of petitioner, such an approach would not force parties to decline to settle labor disputes in order to protect their legal rights, since parties who are conducting themselves in good faith with a view toward amicable adjustment of disputes are presumably more interested in reaching a mutually

satisfactory settlement than in preserving their "legal rights" for further and further litigation.

CONCLUSION

The dismissal entered by the United States Court of Appeals for the Ninth Circuit does not create a conflict with applicable decisions of this Court, nor did that dismissal constitute a substantial departure by a lower court calling for exercise of this Court's supervisory powers. Further, national labor policy and industrial peace would be promoted by putting this dispute finally to rest. Based upon these premises, respondent San Diego Transit Corporation urges this Honorable Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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